

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION

MILLENNIUM PHARMACY SYSTEMS, LLC
f/k/a Millennium Pharmacy Systems, Inc.
d/b/a PharMerica

Plaintiff,

v.

MAPA OPERATING, LLC, ET AL.

Case No. 2:19-CV-02428-GEKP

Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR APPOINTMENT OF PRIVATE PROCESS SERVER

COMES NOW Millennium Pharmacy Systems, LLC f/k/a Millennium Pharmacy Systems, Inc. d/b/a PharMerica (“PharMerica”), plaintiff in the above-styled action, and pursuant to Fed. R. Civ. P. 4(c)(3), submits this Memorandum in Support of its motion to appoint a private process server to serve multiple writs of execution and to make Return of Service as required by the Court. PharMerica submits that appointment of a private process server will expedite service in this matter and prevent improper dissipation of assets without causing undue hardship to the Defendants, and would show the Court as follows:

Default Judgment was entered against Defendants (1) MAPA Operating, LLC; (2) MAPA Management Company, LLC; (3) MIMA Healthcare LLC; (4) Care Pavilion Operating, LLC d/b/a Care Pavilion Nursing & Rehabilitation Center; (5) Cliveden Operating, LLC d/b/a Cliveden Nursing & Rehabilitation Center; (6) Maplewood Operating, LLC d/b/a Maplewood Nursing & Rehabilitation Center; (7) Milton Operating, LLC d/b/a Milton Nursing & Rehabilitation Center; (8) Parkhouse Operating, LLC d/b/a Parkhouse Nursing & Rehabilitation

Center; (9) Tucker Operating, LLC d/b/a Tucker House Nursing & Rehabilitation Center; (10) Watsontown Operating, LLC d/b/a Watsontown Nursing & Rehabilitation Center; and (11) York Operating, LLC d/b/a York Nursing & Rehabilitation Center (collectively “Judgment Debtors”) in this action on October 9, 2019. *See* DN 14. Pursuant to Fed. R. Civ. P. 62(a), the Default Judgment became final and enforceable on November 12, 2019.

On November 15, 2019, counsel for Plaintiff sent eleven (11) Praeceipes for Writ of Execution to the Clerk of this Court to be issued and then forwarded to the office of the U.S. Marshal for the Eastern District of Pennsylvania for service on PNC Bank, N.A., the last known bank utilized by the Judgment Debtors. The Court issued the Writs of Execution on November 25, 2019 and forwarded same to the U.S. Marshal for service.

On December 13, 2019, counsel for PharMerica communicated with the office of the U.S. Marshal regarding the status of service of the Writs of Execution, and was advised that the documents had been received but were not yet in queue for service, that the U.S. Marshall has 90 days to serve the writs, and that it was unlikely that service of the writs would occur prior to January 2020.

Time is of the essence to serve the Writs of Execution in this matter. If the Writs of Execution are not served in an expedited manner, PharMerica has reason to believe that Defendants will cause the dissipation of assets in order to preclude PharMerica from collecting on its default judgment.

Federal Rule of Civil Procedure 4(c)(3) provides that at a plaintiff’s request, the court “may order that service be made by a United States marshal or . . . by *a person specially appointed by the court.*” (emphasis added). This Court has previously acknowledged that appointment of a private process server is permissible under this rule. *See State Farm Mut. Auto.*

Ins. Co. v. Lincow, 263 F.R.D. 154 (E.D. Pa. Aug. 20, 2009). Accordingly, PharMerica moves for appointment of a private process server for purposes of effectuating service pertaining to multiple defendants in an expedited manner and in order to avoid the anticipated dissipation of assets. Permitting a private process server to handle service of the writs in this matter will also help alleviate some of the burden already placed on the U.S. Marshal's process server.

Moreover, permitting PharMerica to employ a private process server will not cause any undue hardship to Defendants. Expedited service will not violate any conceivable right owed to Defendants, as Defendants are not entitled to the extended window of opportunity to transfer and/or conceal assets that is currently afforded them as a result of the U.S. Marshal's backlog of writs to be served.

On this basis, PharMerica respectfully requests that the Court grant PharMerica's Motion and issue the attached Order appointing a private process server in this matter.

Dated: December 18, 2019

Respectfully submitted,

/s/ Daniel C. Fleming

Daniel C. Fleming

PA Bar ID: 80126

WONG FLEMING, P.C.

1500 Market Street, 12 Floor, East Tower #1053

Philadelphia, PA 19102

Tel: (215) 546-2776

dfleming@wongfleming.com

-and-

Benjamin C. Fultz (*pro hac vice* admission to be sought)

Jennifer Metzger Stinnett (*Admitted pro hac vice*)

FULTZ MADDUX DICKENS PLC

101 South Fifth St., 27th Floor

Louisville, KY 40202

Telephone: (502) 588-2000

Facsimile: (502) 588-2020

bfultz@fmdlegal.com

jstinnett@fmdlegal.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2019 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and a copy of the foregoing was also served via U.S. Mail, First Class on the following:

MAPA OPERATING, LLC
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

MAPA MANAGEMENT COMPANY, LLC
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

MIMA HEALTHCARE LLC
Serve: c/o Mordechai Treff
Registered Agent
3025 Chapel Avenue W
Cherry Hill, NJ 08701

CARE PAVILION OPERATING, LLC
d/b/a Care Pavilion Nursing & Rehabilitation
Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

CLIVEDEN OPERATING, LLC
d/b/a Cliveden Nursing & Rehabilitation
Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

MILTON OPERATING, LLC
d/b/a Milton Nursing & Rehabilitation Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

TUCKER OPERATING, LLC
d/b/a Tucker House Nursing & Rehabilitation
Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

YORK OPERATING, LLC
d/b/a York Nursing & Rehabilitation Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

MAPLEWOOD OPERATING, LLC
d/b/a Maplewood Nursing & Rehabilitation
Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

PARKHOUSE OPERATING, LLC
d/b/a Parkhouse Nursing & Rehabilitation
Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

WATSONTOWN OPERATING, LLC
d/b/a Watsonstown Nursing & Rehabilitation
Center
Serve: c/o Registered Agent
6212 Walnut Street
Philadelphia, PA 19139

/s/ Daniel C. Fleming
Counsel for Plaintiff